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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,972	10/06/2003	Peter Irrgang	05727-00021	1809

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EXAMINER	
ROWAN, KURT C	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/679,972	IRRGANG ET AL.	
	Examiner	Art Unit	
	Kurt Rowan	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 November 2005 and 06 July 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) *3,4,7,11 and 13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5,6,8-10 and 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Figs. 3-5 in the reply filed on November 5, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 3-4, 7, and 11, 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in the amendment filed July 6, 2004, in paragraph 14, cowl 12 in line 6 conflicts with cowl 27 in line 5. Please clarify/correct.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, 5, 6, 8, 9, 10, and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,629,382. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious in view of the previously patented claims since the same structural elements are recited. For example in claim 1 of the present invention recites a cowl having a body, a fishing rod handle with a reel seat and fixed reel lock and a movable reel lock. Claim 1 of the '382 patent recites a fishing rod having a handle with a reel seat having movable and fixed rings to mount a fishing reel to the rod. Claim 1 of the '382 patent recites a sleeve on the rod overlapping the reel seat which corresponds to the semi-cylindrical body having top and side surfaces in the present invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 5, 6, 8, 9, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugamata in view of Pontis and Yamamoto et al.

The patent to Sugamata shows a fly fishing assembly having an elongated rod, a reel seat body on one end of the rod for receiving a reel , a reel on the bottom. The reel

seat body, an up locking reel lock for locking one end of the reel on the reel seat body, and a handle on the rod including an elongated sleeve on the rod as shown by Sugamata. Further, Sugamata shows the elongated sleeve having a smooth bulbous central portion, a flaring end , a first smooth waisted portion between the central portion and a flaring rear end. Sugamata shows the flaring rear end of the sleeve inhibiting rearward sliding of a user's hand from the handle during a cast as shown in Fig. 1. Sugamata does not show a semi-cylindrical cowl on the rear end of the sleeve partially surrounding the top and sides of the rod in the vicinity of the reel. Sugamata does not show the cowl having a top and side surfaces forming a continuation of the flaring end of the rod handle. Sugamata does not show a rear flange extending around the bottom of the handle, a convex bottom side edges , a convex trailing end, or a sleeve overlapping the reel seat body for retaining a second end of the reel on the reel seat body. The patent to Pontis shows a fishing rod having a handle with a semi-cylindrical cowl having a top and side surfaces forming a continuation of the flaring end as shown in Fig. 2. Pontis shows the cowl on the rear end of a sleeve partially surrounding the top and sides of a fishing rod in the area of the reel. Pontis shows the cowl including a flange on a bottom rear end surface adjacent the reel and cowl edges as recited noting Figs. 1, 2, 5, and 6. In reference to claims 1, 5, 9, it would have been obvious to provide Sugamata with a semi-cylindrical cowl as shown by Pontis to provide extended protection and comfort to the hand of a user. The patent to Yamamoto shows a fishing rod and reel having an elongated grip 14 overlapping the reel seat body in order to retain the reel foot on the reel seat assembly. It would have been obvious to one of

ordinary skill in the art at the time the invention was made to provide Sugamata with an overlapping elongated grip as shown by Yamamoto to retain the second end of the reel. In refernce to claims 2, 6, and 10, Pontis shows the top and side surfaces having convex trailing top and side edges. In reference to claims 8 and 12, Pontis shows the cowl to be removably joined with the rod handle.

Response to Arguments

5. Applicant's arguments filed July 6, 2004 have been fully considered but they are not persuasive. The terminal disclaimer filed July 6, 2004 will be processed in due course. Applicant argues that none of the reference show an up-locking rod. However, the preamble of the claim is taken to be prior art and it should be pointed out that Figs. 1-2 of the present invention show an up-locking rod and reel. No evidence has been submitted to show that up-locking is a well known term in the art. It should be pointed out that up-locking could be considered to be having the locking rings above the reel since the locking is taking place above the reel and the same rational could be applied to down-locking. With that thought, the cowl of Pontis can be considered as extending down the rod. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

1971). Also, it is not clear why in Sugamata that the telescope obviates the need and eliminates the possibility of having any sort of extension located over the reel seat. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kurt Rowan
Primary Examiner
Art Unit 3643

KR